



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

July 17, 1996

Ms. Christine T. Rodriguez
Staff Attorney
Legal and Compliance, MC 110-1A
Texas Department of Insurance
P.O. Box 149104
Austin, Texas 78714-9104

OR96-1159

Dear Ms. Rodriguez:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 40303.

The Texas Department of Insurance (the "department") received a request for information concerning Allstate Insurance Company ("Allstate"). The department has released some information to the requestor. However, the department has not released copies of complaints filed by insureds against Allstate, because the department is concerned that information contained in these complaints may implicate the proprietary interests of Allstate.

Pursuant to section 552.305 of the Government Code, we notified Allstate of the request for information and of its opportunity to claim that the information at issue is excepted from disclosure. Allstate responded by claiming that portions of the information in the complaints constitute a customer list that is excepted from disclosure under the trade secret prong, or alternatively the commercial or financial information prong, of section 552.110 of the Government Code.

Section 552.110 protects the property interests of private persons by excepting from required public disclosure two types of information: (1) trade secrets, and (2) commercial or financial information obtained from a person and privileged or confidential by statute or judicial decision. The Texas Supreme Court has adopted the definition of trade secret from section 757 of the Restatement of Torts. *Hyde Corp. v. Huffines*, 314 S.W.2d 763m 776 (Tex.), *cert. denied*, 358 U.S. 898 (1958); *see also* Open Records Decision No. 552 (1990) at 2. Section 757 provides that a trade secret is

any formula, pattern, device, or compilation of information which is used in one's business, and which gives him an opportunity to obtain an advantage over competitors who do not know or use it. It may be a formula for a chemical compound, a process of manufacturing, treating or preserving materials, a pattern for a machine or other device, or a list of customers. It differs from other secret information in a business . . . in that it is not simply information as to single or ephemeral events in the conduct of the business, . . . [but] a process or device for continuous use in the operation of the business . . . [It may] relate to the sale of goods or to other operations in the business, such as a code for determining discounts, rebates or other concessions in a price list or catalogue, or a list of specialized customers, or a method of bookkeeping or other office management.

RESTATEMENT OF TORTS § 757 cmt. b (1939).

In determining whether particular information constitutes a trade secret, this office considers the Restatement's definition of trade secret as well as the Restatement's list of six trade secret factors. RESTATEMENT OF TORTS § 757 cmt. b (1939).¹ This office has held that if a governmental body takes no position with regard to the application of the trade secret branch of section 552.110 to requested information, we must accept a private person's claim for exception as valid under that branch if that person establishes a prima facie case for exception and no argument is submitted that rebuts the claim as a matter of law. Open Records Decision No. 552 (1990) at 5-6.

We have considered Allstate's argument that the names and addresses of insureds which appear on complaint forms submitted to the department by the insureds themselves constitute a customer list that is a trade secret of Allstate.² We conclude Allstate has not established that this information is a trade secret. *See id.* Thus, the department may not

¹The six factors that the Restatement gives as indicia of whether information constitutes a trade secret are

(1) the extent to which the information is known outside of [the company]; (2) the extent to which it is known by employees and others involved in [the company's] business; (3) the extent of measures taken by [the company] to guard the secrecy of the information; (4) the value of the information to [the company] and [its] competitors; (5) the amount of effort or money expended by [the company] in developing the information; (6) the ease or difficulty with which the information could be properly acquired or duplicated by others.

RESTATEMENT OF TORTS § 757 cmt. b (1939); *see also* Open Records Decision Nos. 319 (1982) at 2, 306 (1982) at 2, 255 (1980) at 2.

²We also received a brief from the requestor arguing that the information at issue is not excepted from disclosure under section 552.110.

withhold the names and addresses of Allstate insureds under the trade secret prong of section 552.110.

In the alternative, Allstate contends that this information is commercial or financial information. Commercial or financial information is excepted from disclosure under the second prong of section 552.110. In Open Records Decision No. 639 (1996), this office announced that it would follow the federal courts' interpretation of exemption 4 to the federal Freedom of Information Act when applying the second prong of section 552.110. In *National Parks & Conservation Ass'n v. Morton*, 498 F.2d 765 (D.C. Cir. 1974), the court concluded that for information to be excepted under exemption 4 to the Freedom of Information Act, disclosure of the requested information must be likely either to (1) impair the Government's ability to obtain necessary information in the future, or (2) cause substantial harm to the competitive position of the person from whom the information was obtained. *Id.* at 770.

Allstate contends that it would suffer substantial harm to its competitive position if the requestor could obtain the names and addresses of Allstate insureds from complaints that the department received from Allstate insureds. However, the second prong of section 552.110 protects only the competitive position of the *person from whom the information was obtained. Id.* The information at issue was not obtained from Allstate, and, therefore, Allstate is not entitled to protection for this information under the second prong of section 552.110. Accordingly, the department must release the requested information to the requestor.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Karen E. Hattaway
Assistant Attorney General
Open Records Division

KEH/ch

Ref.: ID# 40303

Enclosures: Submitted documents

cc: Mr. William L. Shirer
Law Offices of Steven McGilberry
3710 Rawlins, Suite 1330, Lock Box 54
Dallas, Texas 75219
(w/o enclosures)

Ms. Deborah H. Loomis
Bickerstaff, Heath, Smiley, Pollan, Kever & McDaniel, L.L.P.
1700 Frost Bank Plaza
816 Congress Avenue
Austin, Texas 78701-8021
(w/o enclosures)